IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.642 of 2003

1.The Assistant Elementary Educational Officer, Tiruvennainellur.

2.The District Elementary Educational Officer, Villupuram.

3.The Chief Educational Officer, Villupuram.

4.The District Collector, Villupuram. .. Petitioners/ Appellants/ Defendants

vs.

Joseph Vijayaragavan .. Respondent/ Respondent/ Plaintiff

Revision Petition filed under Section 115 CPC against the order dated 28.2.2003, made in A.S.No.1/2002 on the file of the Principal Sub Court, Villupuram.

For Petitioners : Ms.R.Revathi, Govt. Advocate for Spl.G.P.(C.S.)

For Respondent : Mr.Chandra Bose

ORDER:

This Revision Petition has been filed against the order dated 28.2.2003, made in A.S.No.1/2002 on the file of the Principal Sub Court, Villupuram.

2. Appellants 1 to 4 in A.S.No.1/2002 are the revision petitioners before this court.

3. The respondent herein as plaintiff filed O.S.No.169/2001 on the file of the Principal District Munsif, Thirukovilur for a judgment and decree praying for a sum of Rs.30,000/- towards the interest for the belated payment of gratuity and other terminal benefits and for other reliefs.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The trial court by order dated 31.1.2002 partly decreed the suit by directing the 1st revision petitioner herein to pay interest at 12% from 1.1.1991 on the gratuity amount of Rs.2,228/- which was belatedly paid on 11.2.1997 which should have been paid on 1.1.1991 as the respondent herein retired on 31.12.1990 on superannuation.

5. Against the judgment and decree dated 31.1.2002, the revision petitioners filed an appeal in A.S.No.1/2002 before the Principal Sub Court, Villupuram. The first appellate court by judgment and decree dated 28.2.2003 modified the judgment and decree of the trial court by directing the 1st respondent to pay interest at 12% on the gratuity amount of Rs.2,228/- on and from 3.3.1992 instead of 1.1.1991 as directed by the trial court. Challenging this judgment and decree of the first appellate court, the above Civil Revision Petition has been filed under Sec.115 of Civil Procedure Code.

6. Heard the learned Government Advocate for the revision petitioners and the learned counsel for the respondent. I have also gone through the documents filed and the judgments referred to by them in support of their submissions.

7. The learned Government Advocate for the revision petitioners submitted that G.O.Ms.No.122 dated 20.2.1995 relied on by the respondent herein is not applicable to pension and the respondent herein has not established his case before both the courts below.

8. The learned Government Advocate has also submitted that the civil court has no jurisdiction to try the suit itself.

9. Per contra, the learned counsel for the respondent while submitting that the findings of both the courts below need not be disturbed, contended that he should be permitted to assail the order of the first appellate court insofar as restricting the interest payable by the 1st respondent from 3.3.1992 instead of 1.1.1991 as directed by the trial court, even though the revision petitioners have not filed any revision against that portion of the judgments.

WEB COPY

10. I have considered the rival submissions.

11. The trial court after going through G.O.Ms.No.122 dated 20.2.1995 rendered a finding that on the basis of that G.O. the respondent herein is entitled to interest at 12% onRs.2,228/- from 1.1.1991. The said amount of Rs.2,228/- is the gratuity amount paid to the respondent belatedly on 11.2.1997 even though he retired on 31.12.1990.

https://hcservices.ecourts.gov.in/hcservices/

12. The first appellate court after going through the G.O.Ms.No.122 dated 20.2.1995 held that the G.O. would not apply to the facts of the case, whereas it was found that Government Order No.508 (Finance, Retirement) dated 27.6.1995 would apply to the facts of the case and if that order is applied, the respondent is entitled to with interest at 12% per annum on the belated payment of gratuity of Rs.2,228/- from 3.3.1992 and not from 1.1.1991 as held by the trial court.

13. An attempt was made by the learned counsel for the respondent that the Government Order No.508 dated 27.6.1995 is also not applicable to the facts of the case. But the copy of the order was not produced to substantiate this submission. The question of jurisdiction was raised by the learned Government Advocate for the first time before this court even though the same was not taken as a ground in both the courts below. Therefore I am interfering with the order of the appellate court.

14. Insofar as the submission of the learned counsel for the respondent is concerned, I am not inclined to permit him to assail the order of the 1st appellate court when he has not filed any revision over the aggrieved portion. It is true that this court held in the decision reported in 2003(2) CTC 408 (Arulmighu Kumbeshwarar Koil Kurinjipadi v. The Commissioner H.R. & C.E. Dept.) that though H.R. & C.E. Department has not preferred any appeal in that case, yet court can exercise its revisional power of this court under Article 227 of the Constitution of India and further held that when the trial court has granted a decree which is prima facie illegal, though such a finding is not challenged by any party, still the High Court can exercise its power under Article 227 of the Constitution of India read with Sec.115 of CPC.

15. The facts in the present case are different and distinguishable and it is not established before me that the decree of the first appellate court is prima facie illegal. Therefore the above decision is not helpful to the respondent.

16. In the result, I do not find any illegality or infirmity in the order of the first appellate court warranting interference by this court in its revisional jurisdiction and hence the C.R.P. is dismissed. No costs. C.M.P.no.6795/2003 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sks

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

To

1. The Principal Sub Judge,
Sub Court, Villupuram.

2. The Principal District Munsif,
Thirukoilur.

1 cc to Mr.S. Chandra Bose, Advocate, Sr. 48801
1 cc to spl. government Pleader High Court, Madras, Sr. 48888

C.R.P.(NPD)642/03.

RNA (CO)
kk 7/12

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/